UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
v.	)	No. 4:02 CR 7 CEJ DDN
	)	
PIONTEK A. YOUNG,	)	
	)	
Defendant.	)	

ORDER AND RECOMMENDATION
OF UNITED STATES MAGISTRATE JUDGE

This action is before the Court upon the pretrial motions of the parties which were referred to the undersigned United States Magistrate Judge pursuant to 28 U.S.C. § 636(b). An evidentiary hearing was held on March 25, 2002.

Motion to suppress evidence

Defendant Piontek A. Young has moved to suppress evidence and statements (Doc. No. 11).[1]

From the evidence adduced at the hearing, the undersigned makes the following findings of fact and conclusions of law:

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[1]At the suppression hearing, counsel for the government and counsel for the defendant agreed that the subject matter of the motion to suppress is the physical evidence seized in two searches of 1250 North 48th Street in Washington Park, Illinois; the physical evidence seized in the search of a white Buick automobile on April 19, 2000; and the oral statements made by the defendant.

Defendant is not contesting the seizure of evidence from the alley behind 4012 North 22nd Street, St. Louis, Missouri, on April 12, 2000; from the residence of Nelson Smith on April 19, 2001; from a Dodge Caravan motor vehicle on or about April 20, 2000; from a Chrysler Sebring on or about April 20, 2000; or the taking of a sample of defendant's saliva pursuant to a Missouri state court order on January 2, 2001. The residences of Felicia Randolph and of Keona Williams were searched, but no physical evidence was seized from these locations. See Government's Response (Doc. No. 14), page 5 n.2, filed March 18, 2002.

FACTS

1. On April 12, 2000, Metropolitan St. Louis police officers investigated the gun-shot body of Billy Joe Williams, which had been found in the alley behind 4012 North 22nd Street in the City of St. Louis. Later, Detective Thomas Carroll was dispatched to investigate the killing. From Williams's relatives the police learned that he had been with Ladonna Anderson on April 12.

2. During the evening hours of April 13, 2000, Det. Carroll, Illinois Highway Patrol Troopers, and Washington Park, Illinois, police detectives Jeff Stone and Matt Henwinkle went to the residence of Ladonna Anderson at 1250 North 48th Street in Washington Park. All the officers were identified to Anderson and she was told they were there investigating the killing of Williams. One of the officers told her that at this early stage of the investigation she and others were suspects in the killing. During the conversation, Anderson told the officers that she then was renting this residence. At that time the officers did not know, and Anderson did not tell them that defendant Piontek Young also lived there. The officers then asked if they could search the residence; one of the Washington Park officers explained her rights to her as set out on a written Illinois consent to search form. Det. Carroll also told her that, as part of the investigation, she would be taken to the St. Louis, Missouri, police station. Anderson said they could search the residence and that she would voluntarily go to the St. Louis police station. She then signed the written form. No threats or promises were made to induce her consent to the search or to get her to cooperate in the investigation. No one told her that she was free to leave, but she agreed to cooperate completely in the investigation. Anderson appeared to the officers to be mentally competent to give her consent. At no time was Anderson handcuffed and the officers did not draw their weapons.

3. Thereafter, officers searched the residence on April 13, 14, and 15, and seized items. During the search the police saw the personal effects of at least two other persons. In Anderson's bedroom the police seized clothing belonging to victim Williams. In an exercise room, the police found and seized an identification card belonging to Piontek Young. The clothes of another person were photographed but not seized. Anderson told the police that both she and Young used the exercise room and that Young stored some of his things there. During the search, the officers had no reason to believe that Anderson did not have access to all of the premises there. Shortly after this search Young moved out of that residence.

4. During the late afternoon of April 19, 2000, St. Clair County, Illinois, sheriff's deputy David Clark was on undercover patrol in a one-man unmarked police vehicle in the Village of Alorton, Illinois. Clark was working in conjunction with Sgt. Oliver, also on undercover patrol in another police vehicle. Oliver radioed Clark that he saw a white Buick automobile which had been seen frequenting a housing development area known for its drug trafficking and directed Clark to stop the Buick. Clark drove into the area and saw the white Buick. When the driver of the Buick appeared to see Clark, he drove away from Clark. Clark followed the Buick and made a computer check of the license number. He was advised that the license was registered to a 1999 Dodge automobile, not a Buick. Therefore, he stopped the Buick on Bond Avenue to see whether the vehicle was stolen. As he pulled in behind the Buick, Clark saw that the passenger in the front seat acted suspiciously; he appeared furtively to reach into the rear area, down between his legs, and into the glove compartment. Clark advised Oliver what he saw the passenger do.

5. When Oliver arrived, both officers got out of their vehicles and approached the Buick, Clark on the driver's side and Oliver on the passenger's. As he approached the vehicle, Clark saw an open can of beer in the Buick. Clark spoke to the driver, later

identified as Piontek Young, and told him he stopped him because of the registration of the license plates. Young told him variously that it was a rental car and his girlfriend's car. Clark then asked to see Young's driver's license and insurance papers. Young did not have these documents and had no explanation why. For the safety of the officers, Clark asked Young to step out of the Buick, which he did. Then, at deputy Clark's direction Young placed his hands on the vehicle and Clark patted him down for weapons for his own safety.

6. During this period of time, Sgt. Oliver saw a bag of marijuana inside the Buick and asked the passenger to step out of the car. Oliver then told Clark that he was making a full custody arrest of the passenger. When Oliver began to handcuff the passenger, the passenger yelled out, "Why are you cuffing me?" and attempted to run away. Oliver struggled with the passenger, but ultimately secured him. At that time, as Clark was attempting to handcuff Young, Young scuffled with Clark. Sgt. Oliver came over to help with Young. However, in the scuffle, Young lost his shirt, pager, a shoe, and other items and then ran off. After Det. Clark determined that the passenger was secured, he pursued Young. Other police were called to aid in the pursuit. Later, after Clark returned to the scene of the stop, Sgt. Oliver told deputy Clark that the driver was possibly Piontek Young who was wanted as a suspect in a kidnaping and murder case.

7. Thereafter, a police evidence unit arrived and searched and processed the Buick. From it was seized a quantity of marijuana. Thereafter, a police inventory unit arrived and seized the Buick, which had been rented from Enterprise Leasing.

8. On April 20, 2000, Det. Carroll learned that Young had been arrested by East St. Louis, Illinois, police for matters other than the Williams killing. At about 9:00 p.m. he and local police detectives Jeff Stone and Matt Henwinkle went to the St. Clair County, Illinois, jail and interviewed Young, who by that time had been in custody for about two hours. Before asking him questions,

Det. Carroll told Young about the Williams investigation and that he was a suspect. Det. Stone read Young his constitutional rights to remain silent and to counsel from a preprinted card. Young said he understood his rights. He appeared to be clear-headed and not intoxicated; his responses to the questions were reasonable, logical, and responsive. No threats or promises were made to Young to induce his cooperation and consent to speak. After being advised of his rights and stating that he understood them, for a short time Young made oral statements to the officers. When he said he would not talk with them any more, the officers terminated the interview and made no further attempt to question him.

9. Sometime thereafter, Young was brought to the St. Louis, Missouri, police department. During the booking procedure there, he gave the police the usual biographical and pedigree information, including a residence other than 1250 North 48th Street.

10. On May 15, 2000, with the written permission of the rental property manager, Det. Thomas Carroll and other officers returned to 1250 North 48th Street and searched again. By that date, the premises were empty, Anderson herself having moved out. Fingerprints were taken and evidentiary items were seized. No threats or promises were made to induce the manager's cooperation.

DISCUSSION

First search of 1250 North 48th Street

The issues raised by the motion to suppress relate, first, to the warrantless seizure of items from 1250 North 48th Street in Washington Park, Illinois, on April 13, 14, and 15, 2000. The cardinal question here is whether that search was constitutional, considering that it was without a warrant. A warrantless search is constitutional under the Fourth Amendment, if it is authorized by the voluntary consent of someone who has authority over the place to be searched. Schneckloth v. Bustamonte, 412 U.S. 218, 222 (1973); United States v. Armstrong, 16 F.3d 289, 295 (8th Cir. 1994).

In this case, Anderson told the police that the residence was rented by her and she never told them before the search began that defendant Young also lived there. Thus, when the search began, the officers reasonably believed that Anderson had the authority to consent to a search of the entire premises. See Illinois v. Rodriquez, 497 U.S. 177, 188 (1990). During the search, when the officers found items belonging to Young in the exercise room, Anderson said she also used the room to exercise in. Thus, at this time during the search, the officers reasonably believed she had authority to consent to search even this room which Young also used. Id.

Whether Anderson's consent was voluntarily given depends upon the totality of the circumstances. United States v. Heath, 58 F.3d 1271, 1276 (8th Cir.), cert. denied, 516 U.S. 892 (1995). Her consent was voluntary, if it was the product of an "essentially free and unconstrained choice by its maker." Bustamonte, 412 U.S. at 225; Armstrong, 16 F.3d at 295. The relevant facts include Anderson's mental acuity, United States v. Rambo, 789 F.2d 1289, 1297 (8th Cir. 1986), and whether she was told of her right not to consent or had been advised of her Miranda rights, United States v. Watson, 423 U.S. 411, 425 (1976). See Armstrong, 16 F.3d at 295.

Anderson was advised of her rights orally and in writing. She signed the written consent to search form without compulsion. In spite of the facts that she had been told that she was a suspect in the Williams killing and had not been told she was free to leave, she was never handcuffed, she appeared competent in her thinking, the officers did not draw their weapons, she was very cooperative with the police, and she agreed to go to the St. Louis police station for further investigation.

For these reasons, Anderson's consent to the search was voluntary and the items seized from 1250 North 48th Street in April 2000 should not be suppressed.

Second search of 1250 North 48th Street

Similarly, the items seized from 1250 North 48th Street in May 2000 should not be suppressed. By this time, both Anderson and Young had vacated these premises and thereby gave up any Fourth Amendment standing to complain about that search. United States v. Gale, 136 F.3d 192, 195-96 (D.C. Cir. 1998). Nothing in the record indicated that the consent of the property manager to the search was coerced. Rambo, 789 F.2d at 1295-96.

April 19, 2000, traffic stop

Next, deputy Clark lawfully stopped the Buick on April 19, 2000, when he determined that it bore the wrong license plates. Such is a violation of Illinois state law. See IL ST Ch. 625 § 5/3-701. In the constitutional analysis, it did not matter that Sgt. Oliver earlier had suspected the Buick of possible involvement in drug trafficking in the area where it was initially seen. United States v. Linkous, ___ F.3d ___, slip op. No. 01-3286 at 4 (8th Cir., April 5, 2002) (citing Whren v. United States, 517 U.S. 806, 812-13 (1996)).

A traffic law violation, no matter how minor, establishes probable cause to stop the driver of the vehicle for further investigation of the violation. Linkous, at 4. This investigation may include questioning the driver about the destination and the purpose of the trip, production of the driver's license and the vehicle's registration and insurance papers, and asking the driver to continue the officer's investigation at or inside the police vehicle. Id. (citing United States v. Poulack, 236 F.3d 932, 935 (8th Cir.), cert. denied, 122 S. Ct. 148 (2001)); United States v. Pulliam, 265 F.3d 736, 740 (8th Cir. 2001). The officer may lawfully also ask the passenger similar questions and compare the answers with those given by the driver. Linkous, at 4 (citing United States v. Foley, 206 F.3d 802, 805 (8th Cir. 2000)).

During a lawful traffic stop, the officer may receive more information that indicates possible criminal activity. In such a case, the officer may broaden the investigative detention to pursue

his reasonable suspicions, but in a reasonable manner for a reasonable period of time. Linkous, at 4-6; United States v. Beck, 140 F.3d 1129, 1134 (8th Cir. 1998).

An officer seizes a person and subjects him to a search when he begins to frisk him. United States v. Ward, 23 F.3d 1303, 1306 (8th Cir. 1994). When an officer is justified in detaining a person for further investigation under Terry v. Ohio, 392 U.S. 1 (1968), he may search the person's outer garments to determine whether the person is armed, if he reasonably believes the person may be armed and dangerous. Terry, 392 U.S. at 27; United States v. Tate, ___ F.3d ___, slip op. No. 01-3342 at 5 (8th Cir., April 1, 2002). This determination must be supported by facts reasonably inferred from the circumstances. Tate at 5; Ward, 23 F.3d at 1306.

Given the totality of the circumstances, deputy Clark acted reasonably when he initiated the pat-down search of Young for weapons. The officers had an inchoate suspicion that the Buick was being used for drug trafficking. It appeared to Clark that the driver initially drove away when he saw the deputy. The Buick was being driven with incorrect license plates. Deputy Clark saw the vehicle passenger act in a furtive manner. The driver, Young, had no explanation for his lack of a driver's license or insurance papers. The officer saw an open can of beer inside the vehicle.[2] During this period of time, Sgt. Oliver also saw a quantity of marijuana inside the Buick.[3]

From the totality of these circumstances, Clark had a reasonable suspicion that the occupants were involved in criminal drug activity and both officers reasonably believed they could be dangerous and have immediate access to weapons. Michigan v. Long, 463 U.S. 1032, 1049 (1983). Therefore, the officers were

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[2]This indicated a possible violation of Illinois state law. IL ST Ch. 625 § 5/11-501.

[3]Sgt. Oliver's observation of marijuana inside the Buick established probable cause to search the vehicle. United States v. Booker, 269 F.3d 930, 932 (8th Cir. 2001).

authorized under the Fourth Amendment to detain Young and the passenger and to pat each of them for weapons.

Defendant Young's subsequent struggle and flight from the police indicated criminal wrongdoing. United States v. Wallace, 102 F.3d 346, 348 (8th Cir. 1996). Following his recapture, there was probable cause for the warrantless arrest of defendant Young under the Fourth Amendment. Beck v. Ohio, 379 U.S. 89, 91 (1964).

Search of the Buick

Having seen marijuana in the vehicle, the police had probable cause to search it. United States v. Ross, 456 U.S. 798, 804-09 (1982). The police ultimately learned that defendant Young, the driver of the Buick, was suspected in a kidnaping and murder and he had been lawfully arrested following his flight. The seizure and inventory search of the Buick were, therefore, constitutional. Colorado v. Bertine, 479 U.S. 367, 374 (1987); South Dakota v. Opperman, 428 U.S. 364, 368 (1976); Wallace 102 F.3d at 348.

Furthermore, by running off from the officers, defendant Young effectively abandoned any Fourth Amendment interest he had in the Buick. Abel v. United States, 362 U.S. 216, 241 (1960).

Items seized during the search of the Buick should not be suppressed.

Defendant Young's non-custodial statements

The government has the burden of establishing the admissibility of Young's statements by a preponderance of the evidence. Lego v. Twomey, 404 U.S. 477, 489 (1972); United States v. Astello, 241 F.3d 965, 966 (8th Cir. 2001).

The statements made by defendant Young to the police during the traffic stop of April 19, 2000, should not be suppressed, even though he was not advised of his Miranda rights before he made them.

> It is well established that a roadside traffic stop is a "seizure" within the meaning of the Fourth Amendment. Delaware v. Prouse, 440 U.S. 648, 653 (8th Cir. 1979).

> For purposes of constitutional analysis, a traffic stop is characterized as an investigative detention, rather than a custodial arrest. Berkemer v. McCarty, 468 U.S. 420, 439 (1984). As such, a traffic stop is governed by the principles of Terry v. Ohio, 392 U.S. 1 (1968).

United States v. Jones, 269 F.3d 919, 924 (8th Cir. 2001).

Any statement made by Young to the officers during the apparently ordinary traffic stop, before deputy Clark sought to frisk and handcuff him, was a non-custodial statement. Until Young and his passenger were directed to exit the Buick and to submit to being frisked and handcuffed, no reasonable person under those circumstances would have believed he was under arrest. Berkemer v. McCarty, 468 U.S. at 441-42. Thus, there was no requirement that the officers advise Young of his Miranda rights before he was frisked. Miranda v. Arizona, 384 U.S. 436, 444 (1966).

Defendant Young's custodial statements

The custodial statements made by Young to the police on April 20, 2000, should not be suppressed. The admissibility of these statements which he made during the jail interview depends upon whether he had been advised of his rights, as prescribed by Miranda, supra; whether he knowingly and voluntarily waived the Miranda rights, North Carolina v. Butler, 441 U.S. 369, 373, 375-76 (1979); and whether his statements were voluntary. Lego v. Twomey, 404 U.S. 477, 486-87 (1972).

The totality of the circumstances indicates that he impliedly waived his Miranda rights. Before he made those statements, Young was given his Miranda rights, which he said he understood. And during the interview after he made some statements he affirmatively invoked his right to remain silent. Butler, 441 U.S. at 373, 375-76; United States v. Barahona, 990 F.2d 412, 418 (8th Cir. 1993).

From the same record, the undersigned finds and concludes that Young's statements were voluntary. They were not the result of any government overreaching, such as coercion, deception, or intimidation. Colorado v. Connelly, 479 U.S. 157, 169-70 (1986).

Nothing in the evidentiary record indicates that the officers in any way coerced him or compromised Young's ability to not give them a statement. He had been given his Miranda rights which he waived. After making some statements, he invoked his right to remain silent and the police stopped the interview, in compliance with Michigan v. Mosley, 423 U.S. 96, 103 (1975).

Finally, the information provided by Young when he was later booked by the Metropolitan St. Louis Police Department should not be suppressed. Such routine biographical information is not covered by the requirements of Miranda v. Arizona. Pennsylvania v. Muniz, 496 U.S. 582, 601 (1990).

For these reasons,

IT IS HEREBY RECOMMENDED that the motion of defendant to suppress evidence and statements (Doc. No. 11) be denied.

The parties are advised they have ten (10) days to file written objections to this Report and Recommendation. The failure to file objections may result in a waiver of the right to appeal issues of fact.

ORDER SETTING TRIAL DATE

As directed by the District Judge, this matter is set for a jury trial on May 6, 2002, at 9:00 a.m.

DAVID D. NOCE
UNITED STATES MAGISTRATE JUDGE

Signed this _____ day of April, 2002.